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09/314,324	05/19/1999	WILLIAM JOSEPH ARMSTRONG	R0999-023	5010

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SCOTT A STINEBRUNER  
WOOD HERRON & EVANS LLP  
2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OH 452022917

EXAMINER

DIXON, THOMAS A

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 04/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PA

**Office Action Summary**

Application No.

09/314,324

Applicant(s)

ARMSTRONG ET AL.

Examiner

Thomas A. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11, 12, 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

1. IDS #11, filed 11 February 2002, #12, filed 4 March 2002 and #13, filed 12 March 2002 have been considered.
2. The objections and rejections of the previous action are withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter et al (5,375,206) in view of Gillespie (6,269,391).

As per Claim 1.

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Hunter et al ('206) discloses:  
tracking concurrent uses of a computer program in the logically partitioned computer, see column 1, lines 22-29;  
selectively denying a request to use the computer program in a first logical partition if permitting the requested use would violate a concurrent use software license associated with the computer program, see column 1, lines 31-39.

Hunter et al ('206) does not specifically disclose monitoring a plurality of logical partitions.

Gillespie ('391) teaches a system monitoring multiple partitions and denying a request to execute, see column 12, line 50 – column 14, line 24 for the benefit of providing an identification of programs which may not be processed in parallel.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Hunter et al ('206), if necessary, to include monitoring multiple logical partitions, as taught by Gillespie ('391) et al for the benefit of providing an identification of programs which may not be processed in parallel.

As per claim 2.

Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 1.

Hunter et al ('206) further discloses:  
tracking concurrent users of the computer program is performed by a partition manager accessible by the plurality of logical partitions, the method further comprising accessing the partition manager in response to the request to use the computer program in the first logical partition, see column 4, lines 22-60.

As per claim 3.

Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 2.

Hunter et al ('206) further discloses:  
tracking concurrent users of the computer program includes maintaining a global count of the number of concurrent users of the computer program across the plurality of logical partitions, see column 1, lines 39-49.

As per claim 4.

Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 3.

Hunter et al ('206) further discloses:  
receiving the global count from the partition manager in response to the access thereto, and wherein selectively denying the request includes denying the request when the global count is at least equal to the number of concurrent users permitted by the concurrent use software license, see column 1, lines 39-49.

As per claim 5.

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Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 4.

Hunter et al ('206) further discloses:  
incrementing the global count whenever a request to use the computer program is granted and decrementing the global count whenever a use of the computer program is terminated, see column 1, lines 39-49.

As per claim 6.  
Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 5.

Hunter et al ('206) further discloses:  
each logical partition includes a local license manager, and accessing the partition manager in response to the request is performed by the local manager in the first logical partition, see column 4, lines 22-60.

As per claim 7.  
Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 6.

Hunter et al ('206) further discloses:  
each of incrementing and decrementing the global count includes passing a program identifier to the partition manager, see column 4, lines 22-60.

As per claim 8.  
Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 6.

Hunter et al ('206) further discloses:  
determining in the local license manager for the first logical partition whether permitting the requested use would violate the concurrent use software license, see column 4, lines 22-60.

As per claim 9.  
Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 1.

Hunter et al ('206) further discloses:  
tracking concurrent uses of a plurality of computer programs across the plurality of logical partitions, see column 1, lines 50-57 and column 2, lines 32-39.

As per Claim 10.  
Hunter et al ('206) discloses:  
tracking concurrent uses of a computer program in computer, see column 1, lines 22-29;

selectively denying a request to use the computer program if permitting the requested use would violate a concurrent use software license associated with the computer program, see column 1, lines 31-39.

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Hunter et al ('206) does not specifically disclose monitoring a plurality of logical partitions.

Gillespie ('391) teaches a system monitoring multiple partitions and denying a request to execute, see column 12, line 50 – column 14, line 24 for the benefit of providing an identification of programs which may not be processed in parallel.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Hunter et al ('206), if necessary, to include monitoring multiple logical partitions, as taught by Gillespie ('391) et al for the benefit of providing an identification of programs which may not be processed in parallel.

As per claim 11.

10. Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim

Hunter et al ('206) further discloses:  
a partition manager, accessible by the plurality of logical partitions and configured to track the concurrent uses of the second program across a plurality of logical partitions, see column 4, lines 22-60  
a license manager configured to access the partition manager in response to the request for the use of the computer program in the first logical partition, see column 4, lines 22-60.

As per claim 12.

11. Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim

Hunter et al ('206) further discloses:  
the partition manager is configured to track concurrent uses of the second program by maintaining a global count, see column 1, lines 39-49.

As per claim 13.

12. Hunter et al ('206) in view of McGilton et al discloses all the limitations of claim

Hunter et al ('206) further discloses:  
the license manager is configured to receive from the partition manager the global count and to selectively deny the request when the global count is at least equal to a maximum number of concurrent uses permitted by the concurrent use software license, see column 1, lines 39-49.

As per claim 14.

12. Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim

Hunter et al ('206) further discloses:

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the license manager is configured to increment the global count whenever a request to use the second program is granted and to decrement the global count whenever a use of the second program is terminated, see column 1, lines 39-49.

As per claim 15.

14. Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim

Hunter et al ('206) further discloses:

the license manager is resident in the first logical partition and wherein each additional logical partition includes an associated local license manager, see column 4, lines 22-60.

As per claim 16.

14. Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim

Hunter et al ('206) further discloses:

the global count is associated with a program identifier for the second program, and the license manager is configured to pass the program identifier to the partition manager when accessing the partition manager, see column 1, lines 39-49.

As per claim 17.

11. Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim

Hunter et al ('206) further discloses:

the partition manager is configured to track concurrent uses of a plurality of computer programs across the plurality of logical partitions, see column 1, lines 50-57 and column 2, lines 32-39.

As per Claim 18.

Hunter et al ('206) discloses:

a partition manager tracking concurrent uses of a computer program in computer, see column 1, lines 22-29;

a plurality of license managers, each license manager configured to access the partition manager responsive to a request to use the computer program, see column 1, lines 50-57 and column 2, lines 32-39.

Hunter et al ('206) does not specifically disclose monitoring a plurality of logical partitions.

Gillespie ('391) teaches a system monitoring multiple partitions and denying a request to execute, see column 12, line 50 – column 14, line 24 for the benefit of providing an identification of programs which may not be processed in parallel.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Hunter et al ('206), if necessary, to include monitoring multiple logical partitions, as taught by Gillespie ('391) et al for the

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benefit of providing an identification of programs which may not be processed in parallel.

As per Claim 19.

Hunter et al ('206) discloses:

a first program configured to track concurrent uses of a second computer program in computer, see column 1, lines 22-29;

selectively denying a request to use the computer program if permitting the requested use would violate a concurrent use software license associated with the computer program, see column 1, lines 31-39;

a signal bearing medium bearing the first program, see figure 1 (122).

Hunter et al ('206) does not specifically disclose monitoring a plurality of logical partitions.

Gillespie ('391) teaches a system monitoring multiple partitions and denying a request to execute, see column 12, line 50 – column 14, line 24 for the benefit of providing an identification of programs which may not be processed in parallel.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the invention of Hunter et al ('206), if necessary, to include monitoring multiple logical partitions, as taught by Gillespie ('391) et al for the benefit of providing an identification of programs which may not be processed in parallel.

As per claim 20.

Hunter et al ('206) in view of Gillespie ('391) discloses all the limitations of claim 19.

Hunter et al ('206) further discloses:

the signal bearing medium includes at least one of a recordable medium and a transmission- type medium, see figure 1 (122).



**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7293 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

A handwritten signature in black ink, appearing to read "Thomas A. Dixon". The signature is stylized with a large, looped "D" and a trailing flourish.

Thomas A. Dixon  
Examiner  
Art Unit 2161

April 4, 2002